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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,284	08/18/2003	Chandrasekhar Narayanaswami	YOR920030212US1	8157
23334 7590 06/07/2006 FLEIT, KAIN, GIBBONS, GUTMAN, BONGINI & BIANCO P.L. ONE BOCA COMMERCE CENTER 551 NORTHWEST 77TH STREET, SUITE 111 BOCA RATON, FL 33487			EXAMINER SHAH, AMEE A	
			ART UNIT 3625	PAPER NUMBER

DATE MAILED: 06/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/643,284	NARAYANASWAMI, CHANDRASEKHAR	
	Examiner	Art Unit	
	Amee A. Shah	3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>8/18/03</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 1-20 are pending in this action.

Specification

The abstract is objected to because of the phrase "is disclosed." Applicant is reminded of the proper language and format for an abstract of the disclosure. The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details. The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The use of the trademarks INTERNATIONAL BUSINESS MACHINES (IBM), MICROSOFT WINDOWS, MACINTOSH, SUN has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology. Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Claim Rejections - 35 U.S.C. § 101

35 U.S.C. §101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 8-14 are rejected under 35 U.S.C. 101 because the claimed inventions are directed to non-statutory subject matter. Claims 8-14 are directed to disembodied data structure claim which are per se not statutory. *C.f. In re Wamerdam*. The preamble of the independent claim 8 and all its dependencies are directed to “a computer program product comprising computer instructions on a web site.” The instructions could be in mere text form not in a concrete form and that are not executable by a processor. The examiner suggests redrafting the claims to include embodying the instructions on a computer readable medium executable by a computer or processor.

A claim to a computer readable medium encoded with functional descriptive material that can function with a computer to effect a practical application that results in a useful, concrete and tangible result (i.e. running an assembly line or executing a stock transaction) satisfies Section 101. *See* U.S. Patent 5,710,578 to Beauregard etc., i.e., a set of instructions in combination with a computer system. *C.f. In re Wamerdam* (data structure stored in a computer memory), and *In re Lowery*, 32 USPQ2d 1031 (Fed. Cir. 1994) (data structure in a computer readable medium). Examples of statutory functional descriptive material are: (a) a claimed computer-readable medium encoded with a functional data structure – this defines structural and functional relationships between the data structure and the hardware/software components, *see Wamerdam*; (b) a claimed computer-readable medium encoded with a computer program - this defines structural and functional relationships between the computer program and the computer itself

which allows the program's functionality to be realized provided that a useful, concrete and tangible result is realized; *see* U.S. Patent 5,710,578 to Beauregard et al.

Data merely stored in a computer readable medium to be read or outputted by a computer without any functional interrelationship, and thus do not impart functionality to the computer, i.e., they are not computer components. Examples of non-functional descriptive material include music, literature, art, photographs, data base per se, and are directed to neither a "process" nor a "machine," but rather embrace or overlap two different statutory classes of invention set forth in 35 U.S.C. 101, which is drafted so as to set forth the statutory classes of invention in the alternative only. *Id.* at 1551.

Examiner Note

Examiner cites particular pages, columns, paragraphs and/or line numbers in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that, in preparing responses, the applicant fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Claim Rejections - 35 U.S.C. § 103

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 6-8, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stack, U.S. Pat. No. 6,076,070, cited by Applicant (hereafter referred to as "Stack") in view of Cansler et al., U.S. Pat. No. 6,725,257 B1 (hereafter referred to as Cansler et al.).

Referring to claim 1. Stack discloses a method on a web site for pricing a product and/or service, the method comprising:

- offering a product and/or service for sale on a first web site, wherein the product and/or service is available for purchase in a plurality of configurations (Fig. 5 and col. 5, lines 33-42 – note the first web site is the vendor's site);
- determining on a second web site a price for each of the plurality of configurations of the product and/or service (Figs. 2A and 2B and col. 4, lines 39-65);
- calculating a price for each of the plurality of configurations of the product and/or service based on the prices determined from the second web site and at least one price factor (Figs. 2A and 2B and col. 4, line 66 through col. 5, line 15 – note the price factor is the threshold)); and
- offering each of the plurality of configurations of the product and/or service for sale on the first web site for the calculated prices (col. 6, lines 18-26).

Stack does not explicitly disclose wherein the product and/or service is available for purchase in a plurality of configurations. Cansler et al., in the same field of endeavor of

electronic shopping, discloses a method and system for configuring products wherein the product is available for purchase in a plurality of configurations (*see, at least*, Abstract).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to have modified the system of Stack to include the teachings of Cansler et al. to allow for the product and/or service to be available in a plurality of configurations to determine and calculate the price of the product in the desired configuration. Doing so would provide the user with the opportunity to customize the product exactly to his/her needs, thereby increasing customer satisfaction and the likelihood of a sale.

Referring to claim 6. Stack in view of Cansler et al. discloses the method of claim 1 wherein the product and/or service having a plurality of configurations is any one of: furniture, a computer, a car, and a boat (Cansler et al., col. 1, lines 22-24, col. 3, lines 32-34 and col. 9, lines 30-33 – note the definition of vehicle inherently includes cars and boats) in order to provide the customer the ability to customize products that typically have many configurations, thereby increasing customer satisfaction and the likelihood of a sale.

Referring to claim 7. Stack in view of Cansler et al. discloses the method of claim 6 wherein each of the first web site and the second web site are an e-commerce web site (Stack, (Figs. 2A, 2B and 5, col. 4, lines 39-65, and col. 5, lines 33-42).

Referring to claims 8, 13 and 14. All of the limitations in apparatus claims 8, 13 and 14 are closely parallel to the limitations of method claims 1, 6 and 7, analyzed above and are rejected on the same bases.

Claim 2, 9, 15, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stack in view of Cansler et al. and further in view of Mourad et al., U.S. Pat. App. Pub. No. 2005/0010494 A1 (hereafter referred to as "Mourad et al.").

Referring to claim 2. Stack in view of Cansler et al. discloses the method of claim 1 as discussed above, but does not disclose wherein the determining step comprises: visiting the second web site; selecting each of the plurality of configurations on the second web site; and reading from the second web site a price associated with each of the plurality of configurations.

Mourad et al., in the same field of endeavor of electronic shopping, discloses a method and apparatus for comparing prices of retailers including visiting the second web site, selecting each of the plurality of configurations on the second web site, and reading from the second web site a price associated with each of the plurality of configurations (page 4, ¶0052 – note the process is performed by a spider or WebCrawler).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to have modified the system of Stack in view of Cansler et al. to include the teachings of Mourad et al. to allow for the determination of competitor prices to be performed visiting the second web site, selecting each of the plurality of configurations on the second web site, and reading from the second web site a price associated with each of the plurality of configurations. Doing so would lead to a more efficient search for competitor prices, providing the vendor with

the most recent and relevant information quickly and accurately, thereby allowing the vendor to set its prices at an amount that increases sales.

Referring to claims 9, 15, 19 and 20. All of the limitations in apparatus claims 9, 15, 19 and 20 are closely parallel to the limitations of method claims 2, 6 and 7, analyzed above and are rejected on the same bases.

Claims 3 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stack in view of Cansler et al. and further in view of Reuhl et al., U.S. Pat. No. 5,873,069 (hereafter referred to as "Reuhl et al.").

Referring to claim 3. Stack in view of Cansler et al. discloses the method of claim 1, as discussed above, but does not explicitly disclose wherein the at least one price factor includes any one of: the highest price that the market will bear for each of the plurality of configurations of the product and/or service on the first web site, and the lowest profitable price at which the first web site can sell each of the plurality of configurations of the product and/or service. Reuhl et al., in the same field of endeavor of electronic shopping, discloses a method and system for updating and displaying retail prices, including wherein the prices are calculated based on competitors' prices and price factors including the highest price that the market will bear for each of the plurality of configurations of the product and/or service on the first web site, and the lowest profitable price at which the first web site can sell each of the plurality of configurations of the product and/or service (col. 11, lines 34-43 and line 64 through col. 12, line 27 – note the highest price the market will bear is the active user price determined by whether the competitors' prices are lower and the lowest profitable price is the active user price determined by the profit

margin of the product; *see also* Stack, col. 4, line 66 through col. 5, line 15 – note the threshold is the lowest profitable price the first web site can sell).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to have modified the system of Stack in view of Cansler et al. to include the teachings of Reuhl et al. to allow for the price factor to include the highest price that the market will bear for each of the plurality of configurations of the product and/or service on the first web site, and the lowest profitable price at which the first web site can sell each of the plurality of configurations of the product and/or service. Doing so would allow the vendor to better manage its prices to keep pace with competitors by providing customers products at comparable prices, and still be able to maintain a profit or abide by company policy, as suggested by Reuhl et al. (col. 1, lines 22-27 and line 62 through col. 2, line 3).

Referring to claim 10. All of the limitations in apparatus claim 10 are closely parallel to the limitations of method claim 3, analyzed above and are rejected on the same bases.

Claims 4, 5, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stack in view of Cansler et al. in view of Reuhl et al. and further in view of Maritzen et al., U.S. Pat. App. Pub. No. 2002/0052797 A1 (hereafter referred to as “Maritzen et al.”).

Referring to claim 4. Stack in view of Cansler et al. in view of Reuhl et al. discloses the method of claim 3 as discussed above, but does not disclose wherein the at least one price factor further includes information associated with a buyer of the product and/or service on the first web site. Maritzen et al., in the same field of endeavor of electronic shopping, discloses a

method and system for customizing prices of a product or service including wherein the customization is based on a price factor that includes information associated with a buyer of the product and/or service on the first web site (page, 1, ¶0010 – note the information can be historical purchase activity or group to which user is a member).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to have modified the system of Stack in view of Cansler et al. in view of Reuhl et al. to include the teachings of Maritzen et al. to allow for price factor to include information associated with a buyer of the product and/or service on the first web site. Doing so would allow for the price to be set in a way that is likely to induce the customer to buy, as suggested by Maritzen et al. (page 1, ¶0009).

Referring to claim 5. Stack in view of Cansler et al. in view of Reuhl et al. in view of Maritzen et al. discloses the method of claim 4 wherein the information associated with the buyer of the product and/or service on the first web site includes any one of: the volume of the product and/or service that is being purchased by the buyer; the number of orders previously placed by the buyer on the first web site; the type of equipment owned by the buyer; and the classification of the buyer (pages 1 and 4, ¶¶0010 and 0039 – note the volume of product and number of orders included in purchase history, and is also the quantity of product to be purchased and the classification of buyer is the group membership) in order set the price in a way that is likely to induce the customer to buy, as suggested by Maritzen et al. (page 1, ¶0009).

Referring to claims 11 and 12. All of the limitations in apparatus claims 11 and 12 are closely parallel to the limitations of method claims 4 and 5, analyzed above and are rejected on the same bases.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stack in view of Cansler et al. in view of Mourad et al. and further in view of Reuhl et al.

Referring to claim 16. All of the limitations in apparatus claim 16 are closely parallel to the limitations of method claims 2 and 3, analyzed above and are rejected on the same bases.

Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stack in view of Cansler et al. in view of Mourad et al. in view of Reuhl et al. and further in view of Maritzen et al.

Referring to claims 17 and 18. All of the limitations in apparatus claims 17 and 18 are closely parallel to the limitations of method claims 2, 4 and 5, analyzed above and are rejected on the same bases.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

(1) Pouliot et al., U.S. Pat. App. Pub. No. 2002/0091907 A1, discloses a method and apparatus for searching multiple databases (i.e. websites) using a conventional bot, crawler or spider (*see, e.g., page 2*).

(2) Chopra, U.S. Pat. App. Pub. No. 2002/0128920 A1, discloses a method and system for searching the Internet for the lowest price for each component of an order (*see* entire document).

(3) Shaftel et al., U.S. Pat. App. Pub. No. 2003/0065586 A1, discloses a method and system for pricing products based on competitor prices and price factors such as product cost and profitability (*see* entire document).

(4) Verma et al., U.S. Pat. No. 6,796,006 B1, discloses a method and apparatus for facilitating price comparisons for products including searching for competitor prices (*see* entire document).

(5) Yuen, U.S. Pat. No. 7,024,376 B1, discloses a method and system for enabling users to purchase prices at optimum prices by determining the most favorable price by searching competitor prices (*see* entire document).

(6) Coyle, Diane, "The Information Highway Is A Dead End For Bargain Hunters; Shopping Online Actually Tilts The Balance Back In Favour Of The Seller," The Independent (For. ed.), London, UK, Oct. 12, 2000, pg. 19, discloses using bots for comparing prices and allowing competitors to set prices based on these prices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amee A. Shah whose telephone number is 571-272-8116. The examiner can normally be reached on Mon.-Fri. 7:00 am - 3:30 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pond can be reached on 571-272-6760. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AAS
June 2, 2006

Alh
J.C. Garl
Primary Ex